

Docket No. 2003DE415
Serial No.: 10/817,399
Page 11

REMARKS

The Office Action mailed December 27, 2006 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. The amendments made herein are fully supported by the Application as originally filed. No new matter has been added. Accordingly, reconsideration of the present Application in view of the above amendments and following remarks is respectfully requested.

Claim Status

By this Amendment, Applicants have amended Claim 1 to clarify the subject matter and added new Claims 17 – 24. Applicant has cancelled Claims 11 through 13 without prejudice and respectfully reserves the right to file a divisional application claiming the subject matter disclosed thereby. Consequently, the claims under consideration are believed to include Claims 1 through 10 and 14 – 24.

Claim Rejections Under 35 USC § 112

Claims 1 – 10 and 14 – 16 stand rejected under 35 USC § 112, second paragraph as failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. This rejection is respectfully overcome.

By this Amendment, Applicants have amended the phrase “very substantially inertly” in Claim 1. As such, Applicants respectfully believe all rejections under 35 USC § 112, second paragraph, to claim 1 and all claims depending therefrom, have been overcome and courteously request the claims be allowed.

Claim Rejections Under 35 USC § 102/103

Claims 1 – 10 and 14 – 16 stand rejected under 35 USC § 102(a) as being anticipated by or in the alternative under 35 USC § 103(a) unpatentable over

Docket No. 2003DE415
Serial No.: 10/817,399
Page 12

Morschhauser, et al., WO 02/44230 (US Patent Application No. 2004/0109838). The rejection to Claims 1 – 10 and 14 – 16 is respectfully overcome.

It is well settled that to anticipate a claim, a single source must contain all of the elements of the claim. *See Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Morschhauser, et al., do not disclose the preparation of polymers by a polymerization reaction wherein steps a), b) and c) are performed in the order 1. step a), 2. step b) and 3. step c), either in the paragraphs [0111] - [0114] of the reference, where the polymerization reaction of the reference is described in general terms, or in the polymer preparation examples 1 to 9 of the reference. Furthermore, there is no disclosure of the addition of the higher boiling solvent or solvent mixture.

In view of the above, it is believed that the §102 rejection has been overcome. Applicants, therefore, courteously solicit reconsideration and withdrawal of the rejection.

The Office states, "In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility".

Applicants respectfully can not agree. The objective of the current invention is a one-pot process for preparing polymer concentrates comprising polymers based on acryloyldimethyl-taurine or its salts in highly concentrated liquid or liquid-disperse form having a very high polymer content and low viscosity with simultaneously high stability of the solution or dispersion in a cosmetically and pharmaceutically acceptable matrix (see e.g. paragraph [0006] of the instant application). Such a process has long been desired. This objective has been reached by the process for preparing a polymer concentrate in liquid or liquid-disperse form according to new claim 1 of the instant application. Examples of polymer concentrates prepared

Docket No. 2003DE415
Serial No.: 10/817,399
Page 13

according to new claim 1 of the present invention are e.g. disclosed in paragraph [0126] of the instant application.

The teaching and disclosure of the Morschhäuser reference is based on a completely different objective than the present invention. The objective of the Morschhäuser reference was to find new and useful thickeners and suggests mixtures of copolymers based on acryloyldimethyltaurine and/or taurates in combination with so called "synergistic additives" (see e.g. paragraphs [0001] to [0019] of the reference) but it does not relate to the preparation of concentrates in liquid form with a high polymer content. In accordance with this statement all of the polymer preparation examples 1 to 9 of the Morschhäuser reference describe processes wherein the polymer is isolated, i.e. the polymer is obtained in solid form. No example of the Morschhäuser reference is directed to the preparation of liquid polymer preparations with a high polymer content and there is furthermore no hint or suggestion in the Morschhäuser reference to add a higher boiling solvent or solvent mixture to the polymerization medium after the polymerization has been performed (compare step b) of new claim 1 of the instant application).

Therefore, it is the Applicants courteous opinion that there is no suggestion, hint, or motivation in the Morschhäuser reference to a process according to new claim 1 of the instant application and consequently the Applicants respectfully believe that the §103 rejection has been overcome. Applicants, therefore, courteously solicit reconsideration and withdrawal of the rejection.

Claim Rejections for Nonstatutory Obviousness-type Double Patenting

Claims 1 – 11 and 14 – 16 stand rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1 – 10, of copending U.S. Patent Application No. 10/817,364 and Claims 1 – 16, of copending U.S. Patent Application No. 10/817,371. Applicants respectfully overcome these rejections.

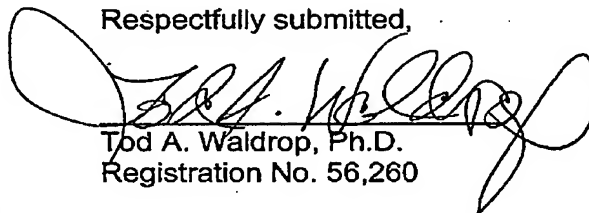
Docket No. 2003DE415
Serial No.: 10/817,399
Page 14

Applicants are concomitantly filing terminal disclaimers in compliance with 37CFR 1.321(c), which may be used to overcome a rejection based on grounds of nonstatutory obviousness-type double patenting provided the patent is shown to be commonly owned with this Application. See 37 CFR 1.130(b).

The Commissioner is hereby authorized to charge deposit account 03-2060 \$50.00 for the additional dependent claim. The Commissioner is also authorized to credit any overpayment or charge any fee deficiency to Deposit Account No. 03-2060.

In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is requested. If the Examiner disagrees, he is requested to contact the agent for Applicant at the telephone number provided below.

Respectfully submitted,



Tod A. Waldrop, Ph.D.
Registration No. 56,260

(CUSTOMER NUMBER 25,255)

Clariant Corporation
Industrial Property Department
4000 Monroe Road
Charlotte, North Carolina 28205
Phone: (704) 331-7732
Fax: (704) 331-7707